

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

JAMES H. SHORTZ,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	2:05cv83-MHT
)	(WO)
AUBURN UNIVERSITY AT)	
MONTGOMERY, et al.,)	
)	
Defendant.)	

OPINION

Plaintiff James H. Shortz filed this lawsuit, pursuant to 42 U.S.C.A. § 1983, claiming racial discrimination and violation of the first amendment. This lawsuit is now before the court on the recommendation of the United States Magistrate Judge that defendants' motion for summary judgment should be granted. Also before the court are Shortz's objections to the recommendation. After an independent and de novo review of the record, the court concludes that Shortz's objections should be overruled and the magistrate judge's

recommendation adopted, with the following additional comments.

Even if Shortz's comments to his supervisor touched on matters of public concern, summary judgment is still appropriate. There is no evidence that the decisionmaker in this case was aware of any comments that may have touched matters of public concern. In fact, Shortz admitted in deposition that he did not tell Gardner, the decisionmaker, about his comments to Robinson nor did Shortz have any information that would suggest that Gardner was aware of these comments before deciding to terminate him. Moreover, the record does not suggest that the conduct upon which the decisionmaker relied in firing Shortz was in any way related to these comments. As the decisionmaker, Gardner terminated Shortz for being argumentative, responding poorly to criticism, and repeatedly challenging his superior officers. In his amended complaint, Shortz concedes that the response to

the EEOC that he was argumentative was "factually accurate." Amended Compl. at 4.

An appropriate judgment will be entered.

DONE, this the 29th day of December, 2006.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE